

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by David
Beaulieu, Commissioner,
Department of Human Rights,

Complainant,

vs.

The Club Tara, Inc.,
Robert W. Browning,
and Leona Kalmen,

ORDER SETTING HEARING ON
DEPARTMENT'S MOTION TO
COMPEL DISCOVERY, IMPOSE
SANCTIONS, AND PRECLUDE
REPRESENTATION BY A
NON-ATTORNEY

Respondents.

The above-captioned matter is pending before Administrative Law Judge Barbara L. Neilson pursuant to a Notice of and Order for Settlement Conference and Hearing dated February 16, 1995. Erica Jacobson, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, Minnesota 55101, has appeared on behalf of the Complainant in this matter. Robert G. Wicker, P.O. Box 10876, Dellwood, Minnesota 55110, who is an officer in The Club Tara, Inc., has appeared on behalf of the Respondents.

On March 29, 1995, the Administrative Law Judge received a letter from the Complainant requesting that: (1) Respondent Browning be compelled to appear for a deposition or be precluded from testifying at the hearing; (2) Mr. Wicker and/or the Respondents be required to reimburse the Department of Human Rights \$32.50 for a court reporter's appearance fee; and (3) Mr. Wicker, a non-attorney, be precluded from representing the Respondents in the hearing in this matter. The Administrative Law Judge advised the Respondents by letter that the letter would be treated as a motion to compel discovery, impose sanctions, and preclude Mr. Wicker from representing the Respondents in this matter, and notified the Respondents that they had ten working days after receipt of the Complainant's letter to respond. A response was filed by the Respondents on April 12, 1995. The Complainant filed a further reply on April 14, 1995. In its reply, the Complainant requested a hearing to address "whether The Club Tara, Inc., is a closely-held family corporation, whether Mr. Wicker is appearing to protect his own interest or performing the service as a business, and whether other shareholders might have any conflicting interest in this contested case proceeding."

Based upon all the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

An evidentiary hearing shall be held on May 4, 1995, at 1:30 p.m. in the Courtrooms of the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota, to determine the facts surrounding the status and composition of The Club Tara, Inc. for the purpose of determining if Mr. Wicker will be permitted to continue to represent the corporation. The issues addressed by the parties should include the identity, relationship, and percentage of interest of each shareholder in The Club Tara, Inc.; whether any of the shareholders have any conflicting interest in this contested case proceeding; the nature of Mr. Wicker's relationship with the corporation; and the status of the corporation's dissolution proceeding. The Complainant's discovery motion and request for sanctions will also be considered at the hearing.

Dated this ____ day of April, 1995.

BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

The law is not clear on the representation of corporations by non-attorneys in administrative hearings. Such representation has been allowed in OSHA and Department of Commerce matters, based upon an analysis of the particular circumstances involved in each case. See Lennes v. Thomas and Sons, OAH File No. 11-1901-8376-2 (order dated February 10, 1994); In Re Beacon Builders, OAH File No. 2-1005-8350-2 (order dated January 21, 1994). In each of those cases, the determination to allow a non-attorney to proceed to represent the respondent was made by examining the characteristics of the corporation to be represented. The Complainant in the present case has requested a hearing to clarify those facts. This request is reasonable and has been granted. The relevant orders in the Thomas and Sons and Beacon Builders cases have been attached for the convenience of the parties in preparing for the hearing.

The response filed by the Respondents did not expressly address the Complainant's motion to compel discovery or its request that sanctions be imposed. The Judge has concluded that the presentation of evidence or argument on those issues would be helpful in reaching a decision. Accordingly, the parties may also address these matters at the May 4 hearing.

B.L.N.

April 25, 1995

Erica Jacobson
Assistant Attorney General
Suite 1200, 445 Minnesota Street
St. Paul, MN 55101

Robert G. Wicker
PO Box 10876
Dellwood, MN 55110

RE: State of Minnesota, by David Beaulieu, Commissioner, Department of
Human Rights, Complainant v. The Club Tara, Inc., Robert W. Browning,
and Leona Kalmen, Respondents; OAH Docket No. 11-1700-9480-2

Dear Ms. Jacobson and Mr. Wicker:

Robert G. Wicker
PO Box 10876

Suite 1200, 445 Minnesota Street
St. Paul, MN 55101

Dellwood, MN 55110

LaVon Regan

Subscribed and sworn to before me
this 25th day of April, 1995.

Notary Public